BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35982

JACKSON COUNTY, MISSOURI
-ACQUISTION AND OPERATION EXEMPTION-
UNION PACIFIC RAILRIAD COMPANY
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 48 C.F.R. § 1150.31, *Et. Seq.*

LANDOWNERS' REPLY TO JACKSON COUNTY'S SUPPLEMENTAL RESPONSE IN FURTHER SUPPORT OF LANDOWNERS' PETITION FOR REVOCATION

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I. INTRODUCTION

Jackson County ("JC") filed a Verified Notice of Exemption on December 23, 2015 in order to acquire the common carrier obligation on a 17.7-mile rail line from the Union Pacific Railroad Company ("UPRR") and to then operate that rail line. The Board permitted the exemption to become effective on February 4, 2016. On October 22, 2018, the Landowners[1] jointly petitioned the Board to revoke the exemption. JC replied in opposition on November 13, 2018, the Landowners then filed supplemental authority on January 28, 2019, and the Board served its decision on February 5, 2019. The Board's decision instituted a proceeding and noted that evidence presented in the Petition for Revocation raised significant questions about whether recreational trail use on the right-of-way remained consistent with JC's acquisition and operation of the rail line and JC's common carrier obligation.

The Board's decision sought further clarification and input pertaining to several specific factual issues relating to JC's construction of the hiking and biking trail and whether the construction of the hiking and biking trail was consistent with JC's common carrier obligation that it acquired from UPRR, such as: (1) whether JC was developing its recreational trail on the actual railbed or whether the recreational trail was being constructed adjacent to the railbed; (2) whether the tunnel that appeared in Exhibit 18 of the Petition for Revocation could even conceivably accommodate both the railbed and a recreational trail; and (3) if the construction of the hiking and biking trail was actually on the actual railbed, whether that was consistent with representations made by JC and the common carrier obligation that JC inherited from UPRR. The fact is, based on JC's supplemental response that was filed on March 29, 2019, that JC has now admitted that it

[1] The landowners are: Deborah S. Groh; DJHS Enterprises, LLC; JHB & MEB Enterprises, LLC; David W. Wells; Dawn R. Wells; Current Properties Investments, LLC; and Nephrite Fund I, LLC. The landowners are plaintiffs in a lawsuit before the U.S. Court of Federal Claims, *Groh v. United States*, Case No. 17-1066L.

is constructing the recreational trail on the actual railbed, that the construction of the hiking and biking trail on the railbed is not consistent with its common carrier obligation, and that JC never intended for the construction of the hiking and biking trail to be consistent with any continuing common carrier obligation, at least for the southernmost 8.75 miles of the right-of-way.

It is now obvious that JC's Supplemental Response to Plaintiffs' Petition for Revocation is full of false and misleading statements that directly contradict prior statements that they made to the Board. JC previously inferred and specifically told the Board that they intended to build a recreational trail that would be alongside the railbed,[2] rather than replace the railbed, and that the construction of the trail was not "inconsistent with JC's common carrier obligation to provide freight rail service to any customer that may require such service in the future."[3] JC also specifically represented to the Board that the rails and ties would remain intact in case any customer desired service in the future—even though there had been no customers for over 30 years.[4] But, despite JC's statements to the contrary, JC has now clearly and repeatedly admitted that they are in the process of constructing the trail on the railbed itself, which was their plan all along, and that they have removed the rails and ties to accommodate that plan, which was also their intention all along, and both admissions are directly and specifically contrary to their prior statements to the Board and their purported continuing common carrier obligation.

JC has obviously abused and manipulated the applicable regulations pertaining to the transfer of a common carrier's obligation to a non-carrier and has committed a fraud on the Board by attempting to construct a hiking and biking trail on the railbed itself under the guise of

[2] In their Reply to CenturyLink's Motion for Stay, JC specifically stated that they intended "to use the Corridor for a recreational trail and may use it for commuter rail service" at the same time. *See* JC's Reply, filed January 19, 2016, at 4.

[3] *See* JC Supp. Resp. at 1.

[4] JC's Reply to CenturyLink's Motion for Stay also specifically stated that "JC has no plans to remove track for the trail and Petitioners statement regarding track removal is unfair and unsubstantiated." *See* JC's Reply, filed January 19, 2016, at 9.

continuing the common carrier obligation when, in fact, everything JC has done has been designed to avoid the application of the Trails Act. The Board's initial jurisdiction and interest was designed to ensure that JC maintained the common carrier obligation as a non-carrier and, even though JC advised the Board of their intent to construct a hiking and biking trail, JC obviously never advised the Board that their intent was to construct a hiking and biking trail in such a manner that was not even consistent with their inherited common carrier obligation. Here, JC utilized the Board's transfer regulations to acquire UPRR's common carrier obligation but never actually had any intent to maintain that common carrier obligation and, instead, always intended to construct a hiking and biking trail on the railbed itself. In essence, JC has obviously and intentionally avoided all of the regulations and procedures to legally acquire the right-of-way for purposes of constructing a hiking and biking trail as a trail operator pursuant to the Trails Act.

The irony is that JC repeatedly states that they have always been transparent concerning their ultimate plan to build a hiking and biking trail. But, by their own admissions, they stopped short of full transparency by never acknowledging and admitting that their plan all along was to construct the trail in place of the railbed and to remove the rails and ties such that it was basically impossible to properly continue with their common carrier obligation. JC has not only committed a fraud on the Board, but JC has also orchestrated an attempt to trample on these Landowners' property rights under Missouri state law[5] and, as a result, the Landowners' Petition for Revocation must be granted.

[5] *See* discussion in Section III *infra*.

II. ALTHOUGH JC SAYS THAT THE "DEVELOPMENT OF A RECREATIONAL TRAIL IS NOT INCONSISTENT WITH JC'S COMMON CARRIER OBLIGATION," THE EXACT OPPOSITE IS ACTUALLY TRUE

JC starts with the proposition that they have been "transparent" about [their] plans to develop a public recreational trail **along** portions of the Corridor that it acquired from UPRR in April of 2016."[6] JC goes even further, however, by stating that "throughout the planning process, JC has taken numerous steps to ensure that the development of that recreational trail is done in a manner consistent with its common carrier obligation to provide rail service over the rail line in the future."[7] Finally, JC attempts to present an incredible argument that the "placement of the recreational trail on the railbed **along** portions of the corridor is consistent with JC's common carrier obligation."[8] The fact is that JC's claims of transparency are a complete sham because JC was not transparent with the now admitted facts that the construction of the hiking and biking trail would be placed on the railbed itself instead of **along** the railbed and that they were going to remove the rails and ties, and both admissions are totally inconsistent with their continuing common carrier obligation.

It is frankly incredible that JC now openly admits that the construction of the hiking and biking trail was not consistent with their common carrier obligation because the recreational trail is openly and blatantly being placed on the railbed itself. In fact, JC specifically states that "JC has placed certain sections of its recreational trail on the railbed itself rather than adjacent to the railbed with the understanding that such sections of the trail on the railbed would be relocated (to the extent necessary) in the event that JC is required to provide future freight rail service (through

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[6] *See* JC's Supp. Br., at 3 (emphasis added). In footnote 2, JC trumpets the fact that they have "been transparent about the possible future use of the Corridor for commuter rail service or other transportation uses" and, depending on the timing and scope of such anticipated projects in the future, their "other uses" may illegally infringe on the Landowners' property rights under state law as well.

[7] *Id.* Possibly providing rail service over the rail line in the future is the definition of "railbanking" under the Trails Act.

[8] *Id.* at 4 (emphasis added).

a contract operator) pursuant to its common carrier obligation."[9] JC even admits that the construction of the hiking and biking trail in place of the railbed covers approximately 8.75 miles, the southern section of the Corridor, and that it was their plan from the beginning.[10] As a result, JC's own admissions demonstrate that it was their plan from the beginning to build a hiking and biking trail in place of the railbed itself, for at least 8.75 miles, which is not consistent with their common carrier obligation at all, and is not only a material misrepresentation to the Board but also confirms the fact that it was JC's intention to "railbank" the line from the very beginning without ever utilizing the rules and regulations applicable to the Trails Act.[11]

JC has also admitted that the construction of a hiking and biking trail is not consistent with their common carrier obligation because the "tunnel" identified in the Board's February 5, 2019 Decision is not consistent with JC's common carrier obligation either.[12] JC has candidly admitted that the tunnel would not accommodate both the railbed and a recreational trail and, after the rails and ties were removed from the tunnel, JC constructed the hiking and biking trail through the tunnel, which is obviously not consistent with their common carrier obligation, and identified plans to reroute the recreational trail outside the tunnel if and when the future reinstallation of track through the tunnel was later required. JC attempts to portray these facts as evidence that they are willing to maintain their common carrier obligation in the future when they clearly mislead the Board when they stated that the recreational trail would be "along" the railbed so that their common carrier obligation could continue. In reality, their plans to potentially move the trail in the future to accommodate rail service in the future is not only inconsistent with their current common carrier

[9] *Id.*
[10] *Id.*
[11] *See* § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d); *see also* 49 U.S.C. § 10903; 49 U.S.C. § 10502; 49 C.F.R. § 1152.29.
[12] *See* JC's Supp. Br. at 8.

obligation but is also the definition of railbanking under the Trails Act should rail service be required in the future.

JC also attempts the incredible argument that the removal of the rails and ties is also somehow consistent with their common carrier obligation. Besides the fact that JC mislead the Board by stating that the recreational trail would be constructed "along" the railbed so as to accommodate rail service and their continuing common carrier obligation, JC attempts to present an argument that they planned all along to remove the track, ties, and ballast from the southern section of the corridor in order "to prepare the corridor for future rail service,"[13] even though they never bothered to inform the Board of that intention. JC even presented detailed findings from TranSystems that demonstrated that the track was in such a state of disrepair that the rails and ties had to be removed "to preserve the integrity of the right-of-way for possible future rail service."[14]

Not only did JC never inform the Board concerning the condition of the track, ties, and ballast, even though they knew that it was their plan to remove the track, ties, and ballast, but the removal of the rails and ties is completely inconsistent with JC's continuing common carrier obligation. Although JC now attempts to spin the removal of the rails and ties as being necessary to maintain their common carrier obligation, the exact opposite is true because JC specifically admitted that the rails and ties were removed in order to accommodate the recreational trail "because of the substantial public cost savings and efficiencies that were achieved by avoiding the need to develop a separately graded area adjacent to the railbed for the recreational trail."[15] JC's argument that they had to expend considerable public funds to rehabilitate the southern segment of the right-of-way "in order to preserve the integrity of the right-of-way for possible future rail

[13] *Id.* at 5.
[14] *Id.* at 7.
[15] *Id.* at 4.

service"[16] is a complete sham—JC expended public funds to prepare for and to build a hiking and biking trail on the railbed itself and never had any intention to preserve the integrity of the right-of-way for possible future rail service.[17]

The incredibly poor condition of the railbed indicates that UPRR had discontinued rail service on the right-of-way for decades without telling anyone. In essence, the Corridor should have been formally abandoned, under both federal law and state law, and was abandoned under state law when the rails and ties were removed.[18] Instead, however, JC developed a plan to acquire the right-of-way from UPRR in order to construct a hiking and biking trail and never had any intention, as a non-carrier, to continue UPRR's common carrier obligation and rights. In essence, JC merely wanted to accomplish a trail without following the Board's regulations to properly become a trail operator under the Trails Act.

In any event, all of JC's actions were consistent with being a trail operator and railbanking the line under the Trails Act, which is what they should have done, and not consistent with maintaining a common carrier obligation. The fact that none of this information was shared with the Board amounts to both a fraud on the Board and an obvious abuse of the Board's rules and regulations and, at the same time, an obvious trampling on the Landowners' property rights as well.

[16] *Id.* at 5.

[17] JC even repeatedly boasted that the reason why the Corridor could immediately be converted to a hiking and biking trail was because there was no need for any common carrier obligation since trains had not actually run for at least 30 years. *See* Plaintiffs' Petition for Revocation, Ex. 10 ("Trains haven't run down those tracks since the Rock Island went bankrupt three decades ago"); Plaintiffs Petition for Revocation, Ex. 14 ("The Corridor has been dormant the last 35 years"); Plaintiffs' Petition for Revocation, Ex. 10 ("residents living near the corridor no longer have to fear that Union Pacific will ever run noisy freight trains through their neighborhoods").

[18] *See* discussion in Section III *infra*.

III. JC HAS QUITE CLEARLY CIRCUMVENTED THE BOARD'S REGULATORY PROCESS CONCERNING ABANDONMENT AND RAILBANKING

Everything set forth by JC in their supplemental response leads to a conclusion that the Corridor should have been abandoned, such as: (1) the fact that trains had not utilized this right-of-way for decades; (2) the fact that the TranSystems report conclusively establishes that the condition of the rails and ties would not even accommodate rail traffic; and (3) the fact that the rails and ties were removed. Obviously, this right-of-way would have been abandoned, thus allowing the Landowners' reversionary interests to materialize, but for the fact that JC clearly wanted to build a hiking and biking trail on the corridor.[19] Although JC could have legally constructed a hiking and biking trail on this corridor if they had properly followed the Board's regulations and procedures under the Trails Act, JC instead decided to illegally build a trail on these Landowners' property and acted as if the Board blessed the building of the trail, which the Board cannot do unless JC follows the proper procedures under the Trails Act.[20]

First, although it is only marginally relevant to the present procedural posture before the Board, there should be no question that the railroad's easements for railroad purposes have been abandoned under Missouri law pursuant to prong 3 of *Preseault II*.[21] Under Missouri law, state law abandonment is proven by evidence of an intention to abandon in addition to an act by which the intention is put into effect.[22] Under these facts, and under Missouri law, since no train traffic

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[19] As previously demonstrated, JC heavily advertised their desire to build a hiking and biking trail on this right-of-way at least as early as 2008.

[20] Although the Board acknowledged JC's intention to build a hiking and biking trail, the Board obviously cannot endorse the legality of such a construction project under Missouri state law because state law governs whether the landowners have compensable property interests and the disposition of reversionary interests. *See Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 8, 20 (1990); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984).

[21] *See Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996) ("*Preseault II*") (a taking occurs under well-established precedent from the Federal Circuit if the railroad's easement was abandoned under state law prior to the issuance of a NITU).

[22] *See Hatton v. Kansas City C&S Ry. Co.*, 162 S.W. 227 (Mo. 1913); *Dalton v. Johnson*, 320 S.W.2d 569, 574 (Mo. 1959); *Schuermann Enterprises, Inc. v. St. Louis County*, 436 S.W.2d 666, 668 (Mo. 1969); *St. Louis-San Francisco Ry. Co. v. Dillard*, 43 S.W.2d 1034, 1038 (Mo. 1931); *Kansas City Area Transp. Auth. v. 4550 Main Assoc., Inc.*, 742 S.W.2d 182 (Mo. App. 1986).

had occurred for decades and since the rails and ties have been removed, the standard for state law abandonment has easily been established because there is obvious evidence of the railroad's intent to abandon and the act of removing the rails and ties is evidence that the railroad put their intention into effect.[23]

Second, even though JC could have legally constructed a hiking and biking trail if they utilized the regulations pursuant to the Trails Act, JC ignored the Board's regulations and, instead of railbanking the corridor properly, for whatever reason, acted as if they were going to proceed as a common carrier in order to avoid the formal railbanking procedures as set forth in the Board's regulations. The end result is that JC is basically railbanking the line, by their own admission, by purportedly preserving it for future rail service if ever required, without actually following the Board's regulations and procedures for railbanking a line.

The ultimate issue for the Board is whether these facts and the arguments set forth by JC, a non-carrier, are consistent with a continuing common carrier obligation. The simple fact is that JC grossly mislead the Board concerning their intentions and their failure to properly follow the Board's rules and regulations pertaining to properly railbanking the corridor now unfairly prejudices the Landowners' state law property rights.

JC attempts to argue that the Board's knowledge that JC planned to construct a hiking and biking trail gives them the necessary purported authority to build a hiking and biking trail on these Missouri Landowners' land. JC is simply not entitled to construct a trail under either federal law or state law—JC violated federal law because they mislead the Board about the facts and circumstances surrounding the construction of the hiking and biking trail on the railbed itself, as opposed to adjacent to the railbed, without properly following the Board's rules and regulations to

[23] Candidly, the standard for state law abandonment can easily be established under these facts but the analysis is even worse for JC since JC is a non-carrier.

railbank the line, and JC is obviously violating the Landowners' state law property rights by imposing a new easement for a hiking and biking trail.[24] The problem with JC's position is that the Board does not have the authority to grant permission to build a hiking and biking trail unless the railroad, or in this case JC, follows the proper procedures to railbank the line under the Trails Act. The end result is that the question of whether a hiking and biking trail easement can be imposed on a railroad purposes easement (particularly one that has actually been abandoned under state law) is a question of state law and JC is merely simply trying to avoid the Trails Act and the state law determination, all to the obvious detriment of these Landowners.

IV. JC'S CONDUCT IN THIS CASE IS ACTUALLY WORSE THAN THE FACTS ASSOCIATED WITH THE SEATTLE CONVERSION WHERE THE BOARD REVOKED THE PETITION FOR EXEMPTION

The Landowners filed a notice of additional authority and a notice of supplemental information on January 28, 2019.[25] The additional authority related to the conversion of a railroad's right-of-way to a recreational trail in Seattle and, in FD33389, a revocation of the exemption was granted because the Land Conservancy of Seattle ("TLC") never intended to provide service over the line and intended to sell it to King County for a recreational trail. The Board considered the evidence of King County's intent to build a hiking and biking trail rather than utilize the corridor for train service as part of their final decision to revoke King County's exemption. In addition, the Board repeatedly stated that it was important to understand that King County was a "non-carrier."

[24] Missouri law simply does not allow the construction of a hiking and biking trail either "on top of" or "along" a railroad purposes easement because a hiking and biking trail is beyond the scope of a railroad purposes easement as a matter of law. *See Brown v. Weare,* 152 S.W.2d 649, 652-653 (Mo. 1941); *Boyles v. Missouri Friends of the Wabash Trace Nature Trail, Inc.,* 981 S.W.2d 644, 649-650 (Mo. App. 1998); *Moore v. Missouri Friends of the Trace Nature Trail, Inc.,* 991 S.W.2d 681, 685 (Mo. App. 1999); *Glosemeyer v. United States,* 45 Fed. Cl. 771, 779 (Fed. Cl. 2000).

[25] The filings were dated January 4, 2019 and January 10, 2019, respectively, but were deemed filed on January 28, 2019 due to the government shutdown.

The evidence reviewed by the Board in the Seattle case pertaining to King County's actions and intent is very similar to the ruse perpetrated by JC. For example, the Board addressed the following issues in the Seattle case:

1) The Board examined letters and newspaper articles that demonstrated King County's intent to build a hiking and biking trail rather than run trains—this is the exact kind of evidence produced against JC in this case;

2) The Board stated that the evidence "**suggested a pre-existing plan to decommission the line and sell it to King County for a hiking and biking trail**"—in other words, King County had a plan to build a hiking and biking trail and had no plan to utilize the corridor for railroad purposes—this too is exactly like the JC situation;

3) The Board also stated and concluded that "**TLC never had any intention of providing rail service on the line**"—that is exactly like the JC situation too;

4) The Board also concluded that the evidence demonstrated that King County "**had put into effect a plan to convert the line to trail use as soon as possible**"—that is exactly like the JC plan as well because the literature from JC demonstrates their intent to utilize the corridor for a hiking and biking trail long before the transaction was finalized; and

5) The Board ultimately concluded that the evidence "**constituted a misuse of our procedures**, which envision that a party that acquires an active rail line does so to continue to provide rail services"—that is exactly like the JC situation too.

The facts concerning JC's actions and intent are remarkably similar to the facts that the Board encountered in the Seattle case. After reviewing the facts, the Board concluded that King County misused the Board's procedures to build a hiking and biking trail when they never intended to actually operate trains. That is exactly the situation with JC as well and, as a result, the Board should revoke JC's petition for exemption just like King County's petition for exemption was revoked because JC had no intention to continue to operate trains, just like King County as a non-carrier, and blatantly misused the Board's procedures.

The arguments made by TLC and BNSF in the Seattle case are illustrative of the arguments made by JC in this case. First, TLC argued in the Seattle case that, under the Board's regulatory

procedures, they must be prepared to provide rail service if they acquired a railroad right-of-way as a non-carrier but, if no service was currently requested on the line, it was not inconsistent with their common carrier obligation to preserve the line for future reactivation and to use it as a trail in the meantime. JC is attempting the same argument now but, given the Board's conclusions in Seattle, it is clear on its face that JC's acts are inconsistent with any notion of currently running trains or even currently running trains while simultaneously allowing a hiking and biking trail along with currently running trains.

Second, an examination of the railroad's position in Seattle should also be instructive here. BNSF claimed, in Seattle, that it took steps to assure that the purchase of the rail line would mean that King County was in a position to resume rail service in the future. BNSF argued that it was interested in transferring the line to a "non-carrier" to reduce regulatory burdens of an unproductive asset, in other words to reduce costs, purportedly arguing that the railroad got to reduce its costs and King County got what they wanted too, which was to utilize the corridor for a hiking and biking trail. It is fascinating that the end result in Seattle, after all the maneuvering, was that the abandoned corridor was railbanked by a non-carrier so that a hiking and biking trail could be constructed just like the Trails Act provides.[26]

The Board ultimately reached the conclusion in Seattle that the "facts supported the conclusion that TLC never had any intention of continuing rail service." In essence, the Board concluded that TLC put into effect a plan to convert the line to trail use as soon as possible following the acquisition. The Board commented on the fact that TLC was a non-carrier, which is significant, because their plan was not to run trains but was instead to develop a hiking and

[26] Why JC did not railbank the corridor in the first place is perplexing to say the least, but why JC paid $50 million to $80 million to UPRR when they should have railbanked the corridor, thereby committing a fraud on the taxpayers of JC, is yet to be answered.

biking trail. In other words, King County had that plan in place at the time of the acquisition. The facts of this case are even worse because JC, by their own admissions, actually put that plan into place well before the acquisition as well. As a result, the Board's regulations are being abused by JC in the exact same manner that the regulations were abused by King County in Seattle.

The Board's Order on February 4, 2018, which instituted this revocation proceeding involving JC, outlined the information the Board was interested in pertaining to the facts of this case. Now, based on the admissions contained within JC's supplemental response, it is clear that the facts involving JC are worse than the facts in Seattle. An analysis of the Board's questions and JC's responses reveals that the petition for revocation must be granted:

1) "The evidence presented in the landowners' petition to revoke, the County's response, and the landowners' supplemental filings raise questions about whether recreational trail use on this right-of-way remains consistent with the County's acquisition and operation of a rail line under 49 C.F.R. § 1150.31 and the County's common carrier obligation;"—JC has admitted that it is not consistent;

2) "Specifically, several pictures included in Exhibit 18 of the petition to revoke, and within the affidavits filed by the landowners on January 28, **suggest that Jackson County is placing its trail on the railbed, where the track previously was, and not adjacent to the track, contrary to the representations made by Jackson County in its 2016 reply**;"—JC has admitted that it is placing the trail on the railbed and not adjacent to it, and that is contrary to representations made to the Board;

3) "In fact, the County states in footnote 4 of its reply dated November 13, 2018, that certain '[s]ections of the recreational trail will lie on the railbed;'"—JC admitted it before and has now admitted it again;

4) "Additionally, one of the pictures shows a tunnel, and it is not clear if the rail line continues through that tunnel or if the tunnel can accommodate both a trail and a rail line [which JC admits that it cannot];"—JC has now admitted that the tunnel cannot accommodate both a trail and a rail line;

5) "Finally, the County also includes a 'hierarchy pyramid' indicating that the County's common carrier obligation on the Line is the lowest of all priorities. (*See* Jackson Cty. Reply, Ex. A at Ex. A, Nov. 13, 2018);"—the common carrier obligation was never a priority and, instead, the construction of a hiking and biking trail has been the highest priority since 2008;

6) "**If Jackson County is placing the trail on the railbed where the track should be located, the County must explain how this activity is consistent with acquiring a rail line on which it has a common carrier obligation**;"—it is not consistent and never was and JC doesn't even attempt to explain how it is consistent with the common carrier obligation that JC inherited; and

7) "**The County should also explain if its intentions toward freight rail service have changed since filing its verified notice, and address the concerns noted above**."—this is the irony because JC's intentions never actually changed, they never had any intention to be a common carrier, they always intended to construct a hiking and biking trail instead, and they always intended to misuse the Board's procedures to obtain that result.

V. CONCLUSION

The end result is that the facts that are now coming out are outrageous and demonstrate a blatant misuse of the Board's procedures and the law. JC did not acquire the corridor from UPRR with any intent to ever operate trains but, instead, had the clear intent to establish a hiking and biking trail on the railbed itself. In addition, the photographs demonstrate that it would be impossible for JC to fulfill its common carrier obligation when, in fact, the rails and ties have been removed and the hiking and biking trail has been placed on top of the railroad purposes easement such that the corridor would not accommodate both a rail line and a trail. As a result, the Landowners' Petition for Revocation of JC's Verified Notice of Exemption must be granted.

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CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by U.S. Mail this 18th day of April, 2019.

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